IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE C.N.RAMACHANDRAN NAIR

WEDNESDAY, THE 8TH NOVEMBER 2006 / 17TH KARTHIKA 1928

WP(C).No. 36194 of 2003(H)

PETITIONER:

THE MUVATTUPUZHA AGRICULTURAL
CO-OPERATIVE BANK LTD., NO.H.W.33, MARKET P.O.,
MUVATTUPUZHA, REPRESENTED BY ITS SECRETARY.

BY ADV. SRI.E.EASWRAN.
SRI.S.EASWARAN

RESPONDENTS:
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1. THE DISTRICT LABOUR OFFICER
(CONTROLLING CIVIL STATION, KAKKANAD, ERNAKULAM.

2. THE REGIONAL JOINT LABOUR COMMISSIONER
(APPELLATE AUTHORITY) CIVIL STATION, KAKKANAD,
ERNAKULAM.

3. SHRI.A.K.HAMEED, AMBATT HOUSE,
P.O.RANDARKARA, MUVATTUPUZHA.

R3 BY ADV. SRI.PAULSON C.VARGHESE
SRI.C.ARUN PRASANTH

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 08/11/2006, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

APPENDIX

PETITIONER'S EXHIBITS:

P1: COPY OF REPRESENTATION DT.12.7.99 SUBMITTED BY R3 BEFORE THE PETITIONER.

P2: COPY OF APPLICATION DT.25.9.99 SUBMITTED BY R3 BEFORE R1.

P3: COPY OF WRITTEN STATEMENT DT.12.11.99 FILED BY PETITIONER BEFORE R1.

P4: COPY OF ORDER DT.17.8.2000 OF R1 IN GC 37/99.

P5: COPY OF APPEAL MEMORANDUM G.A. NO.12/2001 DT.17.11.2000 FILED BY PETITIONER BEFORE R2.

P6: COPY OF ORDER DT.28.4.2003 OF R2 IN T.A. NO.12/2001.

RESPONDENT'S EXHIBITS:

R3(a): TRUE COPY OF DEPOSITION OF THE SECRETARY OF THE PETITIONER-SOCIETY RECORDED BY R1 CONTROLLING AUTHORITY.

TRUE COPY

P.S. TO JUDGE

C.R.

C.N.RAMACHANDRAN NAIR, J.

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W.P.(C) No.36194 of 2003

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Dated this the 8th day of November, 2006.

JUDGMENT

The petitioner is challenging Exts.P4 and P6 orders whereunder the third respondent's claim for gratuity was allowed. The case of the petitioner which is a co-operative Bank is that the third respondent was only a casual employee employed in the Fertiliser Depot run by the Bank along with other lines of business. According to the petitioner which is a co-operative society governed by the provisions of the Kerala Co-operative Societies Act, 1969 and Rules, it is not required to give gratuity to casual employees because Rule 59 of the Kerala Co-operative Societies Rules provides for gratuity only to employees engaged on monthly salary. Besides this, petitioner has a case that the third respondent did not make the application for gratuity within the time prescribed under Rule 7 of the Payment of Gratuity Rules and the application was submitted with a delay of six months. The next contention raised is that the third respondent has not established his employment for 240 days in an year to make him eligible for gratuity under Section 2A of the Payment of Gratuity Act. The last contention is that the Fertiliser Depot in which the third respondent was engaged, did not have the minimum number of employees i.e. 10 for eligibility for gratuity.

2. Counsel for the third respondent contended that the petitioner besides

running the Bank was engaged in sales of fertilisers, provisions, medicine etc. in different shops and all the depots were under the same management which is proved by evidence given by the Secretary of the Bank. There is no dispute that the combined employees' strength of the Bank exceed the minimum for the purpose of liability to pay gratuity to the employees under the Act. Going by the evidence of the Secretary which is read over in court, it is clear that all the units were under same management under the control of the Secretary and therefore, Bank as a whole with all the units has to be treated as a single establishment for the purpose of considering the strength of employees for attracting liability. Since the total number of employees in the Bank as a whole is above 10, the Bank is liable to pay gratuity to eligible employees. Therefore, this issue is held against the petitioner. So far as the dispute as to whether the third respondent has worked 240 days in an year in the Bank is concerned, the petitioner neither gave any appointment-letter nor any document to the third respondent for him to produce and prove it. Wages were stated to be paid against vouchers. Petitioner also did not produce records before the controlling authority to establish the actual days of employment of the third respondent to consider their claim under Section 2A of the Act. Further, it is conceded that third respondent as casual employee was working for 12 years in the Bank and he has left the Bank on health reasons. Apart from this, the Fertiliser shop where the third respondent was engaged was not run on seasonal basis but was in regular operation for all the 12 years when third respondent was employed as a casual worker. The petitioner has no case that any

other casual employee was engaged alternately to substitute third respondent during any time when he served the Bank. In the circumstances and in the absence of records produced by the petitioner, the only presumption is that, the third respondent would have worked atleast 240 days out of 365 days in an year, even if he was on casual employment. Therefore, this issue is also found against the petitioner. Rule 59 to my mind does not stand in the way of giving gratuity to third respondent, even if he was not an employee engaged on monthly salary. Rule 59 is a mandatory provision which makes it clear that Society should provide for gratuity to all salaried employees engaged on monthly basis. This does not mean that other eligible employees under the Payment of Gratuity Act should not be paid gratuity, if they are eligible under the Act. Therefore, third respondent's claim was rightly upheld by the controlling authority and the appellate authority. The last issue raised i.e. delay, is considered by the appellate authority and he rightly held that delay was explained and since there is provision in Rule 7 to condone the delay, the application was treated as one filed in time. Besides this, when claim was filed by the third respondent, the petitioner considered the matter on merits and did not maintain the stand that the application was not maintainable on account of delay. In the circumstances, O.P. is dismissed upholding Exts.P4 and P6 orders of the statutory authorities.

C.N.RAMACHANDRAN NAIR
Judge

pms